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Atty. Dkt. No. 034664-0141

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Rolf W. Reisgies
Title: MODULAR MILKING PARLOR
AND TRANSPORT SYSTEM
Appl. No.: 10/643,521
Filing Date: 8/19/2003
Examiner: Kimberly S. Smith
Art Unit: 3644
Confirmation 4464
Number:

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
P.O. Box 1450
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Dear Examiner Smith:

Under the provisions of 37 C.F.R. § 41.37, this Appeal Brief is being filed together with a credit card payment form in the amount of \$500.00 covering the 37 C.F.R. 41.20(b)(2) appeal fee. If this fee is deemed to be insufficient, authorization is hereby given to charge any deficiency (or credit any balance) to the undersigned deposit account 50-2350.

I. REAL PARTY IN INTEREST

The real party in interest is the assignee of record, DeLaval, Inc. (as recorded in the records of the United States Patent and Trademark Office at Reel/Frame 013462/0568 on November 6, 2002 for parent application 10/209,648).

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II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences that will directly affect, be directly affected by, or have a bearing on the present appeal, that are known to Appellants or Appellants' patent representative.

III. STATUS OF CLAIMS

Claims 1-18 are currently pending in the present application with Claims 1-10 withdrawn from consideration. The present appeal is directed to Claims 11-18, all of which stand rejected pursuant to a Final Office Action dated May 3, 2006.

IV. STATUS OF AMENDMENTS

Claims 1-18 were pending in the application, with Claims 1-10 withdrawn from consideration, when a Final Office Action dated May 3, 2006, was issued. A reply to the Final Office Action, without claim amendment, was filed on June 13, 2006, during the advisory period. An Advisory Action was issued on June 26, 2006. A Notice of Appeal was filed August 29, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Appellants' claimed invention pertains to modular milking parlors. In particular, Appellants' claimed invention relates to mobile modular milking parlors. See present application, page 3, paragraph [0005].

A. Claim 11

Independent Claim 11 relates to a modular milking parlor. The modular milking parlor 10 comprises a rigid milking parlor frame 11 and a plurality of milking stations 20 mounted in a row to the milking parlor 10 (e.g., see FIG. 1 and paragraph [0016]). The rigid milking parlor frame 11 comprises (1) a rectangular frame base 12 including lateral and longitudinal 30, 31, 32 members joined together to define a front side and back side of the modular parlor 10 (e.g., see FIGS. 3 and 4 and paragraph [0019]), (2) a plurality of upright

members 14 attached to and extending upwardly from the frame base 12 (e.g., see FIGS. 3 and 4 and paragraph [0016]), and (3) at least one longitudinal support member 16 attached to upright members 14 and extending along the front side of the modular parlor 10 above the frame base 12, and at least one lateral support member 17 extending from an upright member 14 positioned at the back side of the modular parlor 10 and connected to the longitudinal support member 16 to brace the longitudinal support member 16 (e.g., see FIGS. 3 and 4 and paragraph [0016]). The plurality of milking stations 20 are mounted in a row to the milking parlor frame 11 between the frame base 12 and the longitudinal support member 16 at the front side of the modular parlor 10 (e.g., see FIGS. 1-4 and paragraphs [0016] and [0017]), further including a plurality of wheeled carriages 60 temporarily connected to the milking parlor frame 11, each carriage 60 being detachable from the milking parlor frame 11 upon arrival of the frame 11 at a destination (e.g., see FIG. 4 and paragraphs [0022] and [0023]) and having a carriage body 61 and means for adjustably mounting wheels 73 to the carriage body 61 so that the wheels 73 can be moved up and down with respect to the carriage body 61 (e.g., see FIGS. 4 and 5 and paragraph [0023]).

Claim 11 contains means plus function language: “and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.” A structure in the specification that corresponds to the means plus function language of Claim 11 is the jack 74 and other jack mechanisms such as electrical or pneumatic drivers, like the air-driven jack described in paragraph [0023] and illustrated in FIG. 5. Such means are fully described in paragraph [0023] as:

...Each of the carriages 60 has swiveling caster type wheels 73 which are each attached to a jack 74 (e.g., similar to a trailer jack) having a post 75 that can slide upwardly and downwardly in an upright hollow sleeve 76 of the carriage body 61. Suitable jacks are available commercially, e.g., from Northern Tool & Equipment Co. A hand crank 77 is connected to a ratchet mechanism within each jack 74 and can be turned by hand to move the post 75 and the wheel 73 connected to it upwardly or downwardly with respect to the carriage body 61. Thus, by turning the crank 77, an operator can raise or lower the wheel 73 with respect to the frame of the modular parlor, and the relative height of each of the wheels 73 on the carriages 60 can be adjusted individually to account for changes in the surface terrain over which the modular parlor is being moved

as supported by the wheeled carriages 60. The wheels 73 may be adjustably mounted by other jack mechanisms, e.g., electrical or pneumatic drivers, that allow an operator to control the raising or lowering of several wheels 73 at one time. In an exemplary pneumatically adjusted carriage system, as illustrated schematically in Fig. 5, an air pressure operated piston-cylinder (e.g., 3 in. diameter), one of which is shown in dashed lines in Fig. 5, can replace the screw of a conventional trailer jack. The cylinders 85 on each of the carriages 60 may be connected to a common air supply line 87 which extends to a regulator 88 and a reservoir tank 89 that travel with the modular parlor 10. The reservoir tank is charged to an appropriate pressure level (e.g., 140 to 160 psi for a 10 gallon tank). The pressure regulator 88 regulates the pressure supplied to the cylinders. After the carriages 60 are attached to the frame 11 (while it is resting on the ground), the regulator 88 may be adjusted to supply sufficient pressure to raise the frame off of the ground (e.g., in the range of 3 inches). As the modular parlor supported by the carriages 60 is moved, if a wheel encounters a rise, it assumes more weight. The pressure in the cylinder connected to that wheel—and therefore the pressure in the entire system—increases (e.g., from 90 psi to 91 psi). In response, the regulator 88 (set, e.g., to 90 psi) maintains that pressure to all wheels so that the wheel displaces with the rising terrain while continuing to bear a relatively constant portion of the weight of the parlor. A valve 91 (e.g., a three-way valve) is preferably connected between the air supply line 87 and each air cylinder 85. The valves 91 can each be manually operated to supply air under pressure from the line 87 in one position of the valve and to vent the air cylinder in another position of the valve. When a wheel 73 encounters a sharp rise (such as at a curb) the valve 91 controlling the air supplied to the air cylinder 85 connected to that wheel can be opened to release the pressure on the wheel, allowing the wheel to be manually raised to a new height to clear the rise, and the valve 91 can then be closed to apply pressure to the wheel to engage the higher surface. Such air cylinder-piston drives, hand operated mechanical screw jacks, electrically operated jacks and all equivalent devices shall be considered as means for adjustably mounting the wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.

(Emphasis added.)

Appellants separately note that, in Claim 11, the feature of each carriage being detachable is described in the specification at paragraph [0023]:

Each of the carriages 60 has a carriage body 61 which is **releasably attached** to one of the structural members of the frame 11. For example, the frontmost carriage 60 on the right-hand side of Fig. 4 is attached to the upright web 35 of the longitudinal member 30 by a downwardly extending section 62 of the carriage body which has a slot 63 formed therein which fits over the upright web 35. A hole drilled through the upright web 35 allows **a hand turned bolt 65 to be threaded through an opening in one of the walls of the carriage section 62 and through the opening in the upright web 35** and then threaded into an opening on the other side of the section 62 to firmly connect the longitudinal frame member 30 to the carriage 60. Alternatively, the carriage 60 shown on the left-hand side of Fig. 4 has a post 70 mounted to it, e.g., by welding or bolting the post 70 to the carriage body 61, with the post 70 then being firmly attached to one of the upright members 14 by **clamps 71**. All such structures and all equivalent structures shall be considered means for releasably connecting the carriage body to a structural member...

(Emphasis added.)

B. Claim 12

Independent Claim 12 also relates to a modular milking parlor. The modular milking parlor 10 comprises a rigid milking parlor frame 11 including a rectangular frame base 12 including lateral and longitudinal 30, 31, 32 members joined together to define a front side and back side of the modular parlor 10 (e.g., see FIGS. 3 and 4 and paragraph [0019]); a plurality of milking stations 20 mounted in a row to the milking parlor frame 11 above the frame base 12 at the front side of the modular parlor 10 (e.g., see FIGS. 1-4 and paragraphs [0016] and [0017]), and a plurality of wheeled carriages 60 temporarily connected to the milking parlor frame 11, each carriage 60 being detachable from the milking parlor frame 11 upon arrival of the frame 11 at a destination (e.g., see FIG. 4 and paragraph [0022]) and having a carriage body 61 and means for adjustably mounting wheels 73 to the carriage body 61 so that the wheels 73 can be moved up and down with respect to the carriage body 61 (e.g., see FIGS. 4 and 5 and paragraph [0023]).

Claim 12, contains means plus function language: “and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.” The structure in the disclosure, that corresponds to the means plus function language is the jack 74 and other jack mechanisms such as electrical or pneumatic drivers like the air-driven jack described in paragraph [0023] and illustrated in FIG. 5. Such means are fully described in paragraph [0023] as:

...Each of the carriages 60 has swiveling caster type wheels 73 which are each attached to a jack 74 (e.g., similar to a trailer jack) having a post 75 that can slide upwardly and downwardly in an upright hollow sleeve 76 of the carriage body 61. Suitable jacks are available commercially, e.g., from Northern Tool & Equipment Co. A hand crank 77 is connected to a ratchet mechanism within each jack 74 and can be turned by hand to move the post 75 and the wheel 73 connected to it upwardly or downwardly with respect to the carriage body 61. Thus, by turning the crank 77, an operator can raise or lower the wheel 73 with respect to the frame of the modular parlor, and the relative height of each of the wheels 73 on the carriages 60 can be adjusted individually to account for changes in the surface terrain over which the modular parlor is being moved as supported by the wheeled carriages 60. The wheels 73 may be adjustably mounted by other jack mechanisms, e.g., electrical or pneumatic drivers, that allow an operator to control the raising or lowering of several wheels 73 at one time. In an exemplary pneumatically adjusted carriage system, as illustrated schematically in Fig. 5, an air pressure operated piston-cylinder (e.g., 3 in. diameter), one of which is shown in dashed lines in Fig. 5, can replace the screw of a conventional trailer jack. The cylinders 85 on each of the carriages 60 may be connected to a common air supply line 87 which extends to a regulator 88 and a reservoir tank 89 that travel with the modular parlor 10. The reservoir tank is charged to an appropriate pressure level (e.g., 140 to 160 psi for a 10 gallon tank). The pressure regulator 88 regulates the pressure supplied to the cylinders. After the carriages 60 are attached to the frame 11 (while it is resting on the ground), the regulator 88 may be adjusted to supply sufficient pressure to raise the frame off of the ground (e.g., in the range of 3 inches). As the modular parlor supported by the carriages 60 is moved, if a wheel encounters a rise, it assumes more weight. The pressure in the cylinder connected to that wheel—and therefore the pressure in the entire system—increases (e.g., from 90 psi to 91 psi). In response, the regulator 88 (set, e.g., to 90 psi) maintains that

pressure to all wheels so that the wheel displaces with the rising terrain while continuing to bear a relatively constant portion of the weight of the parlor. A valve 91 (e.g., a three-way valve) is preferably connected between the air supply line 87 and each air cylinder 85. The valves 91 can each be manually operated to supply air under pressure from the line 87 in one position of the valve and to vent the air cylinder in another position of the valve. When a wheel 73 encounters a sharp rise (such as at a curb) the valve 91 controlling the air supplied to the air cylinder 85 connected to that wheel can be opened to release the pressure on the wheel, allowing the wheel to be manually raised to a new height to clear the rise, and the valve 91 can then be closed to apply pressure to the wheel to engage the higher surface. Such air cylinder-piston drives, hand operated mechanical screw jacks, electrically operated jacks and all equivalent devices shall be considered as means for adjustably mounting the wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.

(Emphasis added.)

Appellants separately note that, in Claim 12, the feature of each carriage 60 being detachable is described in the specification at paragraph [0023]:

Each of the carriages 60 has a carriage body 61 which is **releasably attached** to one of the structural members of the frame 11. For example, the frontmost carriage 60 on the right-hand side of Fig. 4 is attached to the upright web 35 of the longitudinal member 30 by a downwardly extending section 62 of the carriage body which has a slot 63 formed therein which fits over the upright web 35. A hole drilled through the upright web 35 allows **a hand turned bolt 65 to be threaded through an opening in one of the walls of the carriage section 62 and through the opening in the upright web 35** and then threaded into an opening on the other side of the section 62 to firmly connect the longitudinal frame member 30 to the carriage 60. Alternatively, the carriage 60 shown on the left-hand side of Fig. 4 has a post 70 mounted to it, e.g., by welding or bolting the post 70 to the carriage body 61, with the post 70 then being firmly attached to one of the upright members 14 by **clamps 71**. All such structures and all equivalent structures shall be considered means for releasably connecting the carriage body to a structural member...

(Emphasis added.)

C. Claim 16

Claim 16 is a claim that is dependent from independent Claim 12. Claim 16 is directed to the modular milking parlor 10 of Claim 12, wherein each milking station 20 contains an automatic teat cup cluster detacher (e.g., see paragraph [0017]).

D. Claim 18

Claim 18 is a claim that is dependent from dependent Claim 16, which in turn is dependent from independent Claim 12. Claim 18 is directed to the modular milking parlor 10 of Claim 16, wherein the automatic teat cup cluster detacher includes a support arm 22 for supporting a teat cup cluster that has been removed from a cow (e.g., see FIG. 3 and paragraph [0017]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues on appeal are whether the Examiner erred in rejecting:

1. Claims 11-15 and 17 as being unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 3,019,763 (Ferris) in view of U.S. Patent No. 4,250,836 (Smith).
2. Claims 16 and 18 as being unpatentable under 35 U.S.C. § 103(a) over Ferris in view of U.S. Patent No. 6,044,793 (van der Lely).

VII. ARGUMENT

A. Legal Standards

As indicated above, Claims 11-18 of the present application have been rejected under 35 U.S.C. § 103(a), which states:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The legal standards under 35 U.S.C. § 103(a) are well-settled. Obviousness under 35 U.S.C. § 103(a) involves four factual inquiries:

- 1) the scope and content of the prior art;
- 2) the differences between the claims and the prior art;
- 3) the level of ordinary skill in the pertinent art; and
- 4) secondary considerations, if any, of nonobviousness.

See Graham v. John Deere Co., 383 U.S. 1, 148 U.S.P.Q. 459 (1966).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). “[The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” In re Fritch, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). As noted by the Federal Circuit, the “factual inquiry whether to combine references must be thorough and searching.” McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 60 USPQ.2d 1001 (Fed. Cir. 2001). Further, it “must be based on objective evidence of record.” In re Lee, 277 F.3d 1338, 61 USPQ.2d 1430 (Fed. Cir. 2002). The teaching or suggestion to make the claimed combination must be found in the prior art, and not in the Applicant’s disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ.2d 1438 (Fed. Cir. 1991). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ.2d 1430 (Fed. Cir. 1990). “It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to ‘[use] that which the inventor taught against its teacher.’” Lee (citing W.L. Gore v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983)).

B. Rejection of Claims 11-15 and 17 Under 35 U.S.C. § 103(A) Based on Ferris in View of Smith.

In the Final Office Action dated May 3, 2006, Claims 11-15 and 17 were rejected under 35 U.S.C. § 103(a) over Ferris in view of Smith. The Examiner maintained this rejection in the Advisory Action mailed June 26, 2006. Appellants respectfully request the Board reverse the rejection maintained by the Examiner for at least the reasons that are described below.

1. The Examiner's rejection of Claims 11-15 and 17 under 35 U.S.C. § 103(a) over Ferris in view of Smith should be reversed because at least one limitation of each of these claims is not taught or suggested by the combination of Ferris and Smith.

Appellants submit that the Examiner has failed to establish a *prima facie* case of obviousness. As stated in M.P.E.P. § 2143:

In order to “establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Claims 11-15 and 17 would not have been obvious to one of ordinary skill in the art because at least one limitation from independent Claims 11 and 12 is not taught or suggested by the combination of Ferris and Smith. Ferris and Smith do not teach “a plurality of a plurality of wheeled carriages temporarily connected to the milking parlor frame, each carriage being detachable from the milking parlor frame.”

Independent Claims 11 and 12 require, in part, “a plurality of wheeled *carriages temporarily connected* to the milking parlor frame, each *carriage being detachable from the milking parlor frame* upon arrival of the frame at a destination and having a carriage body and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.” (Emphasis added.)

Ferris does not teach (1) a plurality of wheeled carriages **temporarily connected** to the milking parlor frame, (2) each carriage being **detachable** from the milking parlor upon arrival of the frame at a destination, (3) a carriage body and means for **adjustably mounting wheels** to the carriage body so that the wheels can be moved up and down with respect to the carriage body, and Smith fails to fill the noted voids.

In the Final Office Action, the Examiner alleges that Ferris “discloses a modular milking parlor comprising a frame base, plurality of upright members, at least one longitudinal support member and a plurality of milking stations...Ferris does not disclose four or more wheeled carriages...[and]...[f]urther Ferris does not teach the wheels being adjustably mounted so as to raise and lower with respect to the carriage body.” (Final Office Action, pages 3-4.) To remedy this failing of Ferris, the Examiner then alleges that Smith, “within the analogous art of animal related trailers,” teaches means for adjustably mounting the wheels.” (Final Office Action, page 4.) Further, the Examiner alleges that “the Applicants have not disclosed that four or more carriages solves any stated problem or is for any particular purpose...” (Final Office Action, page 4.) In the Advisory Action mailed on June 26, 2006, the Examiner reiterates that Ferris, in view of Smith, teaches the invention as claimed. However, as further explained below, Appellants submit that Ferris does not teach or suggest each and every element of the claims as required by M.P.E.P. § 2143, and Smith fails to fill the void.

Appellants respectfully assert that the Examiner has not established that Ferris or Smith, alone or in combination, suggests or would motivate one of skill in the art to modify Ferris to teach all of the claim limitations. Appellants stand by the remarks of record regarding the Examiner’s mis-characterization of the axle of Ferris’ mobile milk house and milk room, as being “detachable,” or “temporary,” in light of Ferris’ own description of that invention as “a trailer, truck, or the like for highway travel.” (Ferris, col. 1, lines 23-24.) Such remarks of record by the Appellants have been proffered in previous responses such as those filed on February 10, 2006 and June 23, 2006. In summary, Appellants’ position is that the axle of a semi-trailer is not a detachable carriage temporarily connected to the parlor frame, as the terms “carriage,” “detachable,” and “temporarily” are defined and used in the present application, and as conventionally defined.

Appellants believe the Examiner's mischaracterization to be an untenable position in view of the oft-repeated maxim that "the claims are to be read in light of the specification." To be clear, Appellants are asking that the claims be read through the eyes of a person of ordinary skill in the art given the definitions and descriptions provided in the specification and those definitions as generally accepted. Appellants are not asking that limitations from the specification be read into the claims.

The Appellants have noted repeatedly that the specification and claim language itself provides ample guidance as to the meaning of the terms "carriage," "temporarily connected," and "detachable," as those terms are used in the claims. For example, a "carriage" is described to have a body 61, swiveling caster type wheels 73, attached to a jack 74. (Paragraph [0023].) "Temporarily connected" and "detachable" are used complementary with one another and describe how the carriages are used by being "mounted to the modular parlor" prior to transport, transporting the modular parlor into the parlor building in which it is installed, and "[o]nce the modular parlor 10 has been brought into the parlor building...[t]he carriages 60 are then detached from the modular parlor." (Paragraphs [0025] and [0026].)

While summarizing the disclosure of Ferris in the Office Action mailed on November 16, 2005, the Examiner stated that "axle mechanisms are detachable from frames in order to replace them when damage occurs thereto." (Page 2.) Under the logic of this argument, the Examiner has invariably confused the definition of "replaceable" with "detachable," and has misconstrued a "carriage" to be an "axle mechanism." As Appellants replied on February 10, 2006, "[a]s used in the respect suggested by the Examiner, virtually any replaceable component of any structure could be said to be 'detachable.' For instance, under the Examiner's definition, a vehicle's doors, steering wheel, windows, speedometer, transmission, etc. are all detachable. Further, shingles on a roof, a toilet or sink in a bathroom, or the pillars of the Coliseum could all be said to be detachable using a replaceability definition." (Page 7.)

Ferris' own words belie a "detachable" definition for the axle of his trailer. At the time of Ferris' invention, Ferris describes the trailer as an "entirely new concept by performing the entire milking operation for a plurality of farms in a local area" (col. 1, lines 8-10, emphasis

added) whereby the “concept” has “all the necessary equipment self-contained” (col. 1, lines, 39-40) in a “trailer having a platform or floor defin[ing] an enclosure for the platform.” (Col. 2, lines 28-32). Ferris also states that the concept is for “highway travel” (col. 1, lines 23-24). In light of Ferris’ own description of his invention, the Examiner’s characterization of the Ferris trailer as having a detachable carriage is without foundation. Detachable carriages are not equivalent to or suggested by semi trailer axle mechanisms.

The Examiner has also mischaracterized a “carriage” as equivalent to a semi trailer axle mechanism. A “carriage” is described in paragraph [0023] of the present application to have a body 61, swiveling caster type wheels 73, attached to a jack 74. (Paragraph [0023].) Conversely, the semi-trailer of Ferris is shown in FIG. 2 to be an axle typical of semi trailers, for “highway travel.” (Col. 1, line 24.) As will be recognized by one of skill in the art, and laypersons alike, swiveling caster type wheels and a jack on a body to form a “carriage,” is not similar to, nor an equivalent of, an axle on a semi-trailer.

In the Final Office Action, the Examiner alleged that “the Applicants have not disclosed that four or more carriages solves any stated problem or is for any particular purpose...,” (Final Office Action, page 4) Appellants respectfully disagree. Claims 11 and 12 recite “a *plurality of wheeled carriages* temporarily connected to the milking parlor frame, each carriage being detachable from the milking parlor frame upon arrival of the frame at a destination and having a carriage body and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.” Paragraph [0025] of the present application, in describing FIG. 4, shows five wheeled carriages, explaining:

A particular advantage of the adjustable-height wheeled carriages 60 is that changes in the elevation of the terrain over which the modular parlor is being transported can be readily accommodated without requiring lifting of the entire modular parlor by a forklift or other external mechanism. For example, if the modular parlor must go over a curb or other small change in elevation, the leading end wheels 73 can be drawn upwardly to a point where one or more of the wheels is above the level of the curb, allowing the modular parlor to be pushed to position where those wheels are all above the curb, after which the wheels can be lowered to provide support for that end of the modular parlor. The other set of leading wheels can be drawn up in a similar manner to allow them to clear

the curb and then be driven back down to provide support for the modular parlor. A similar procedure can be used with all of the other wheels 73 on the other carriages 60. Similar adjustment of the height of the wheels can be used to accommodate rough terrain such as potholes or cracks in concrete, etc.

(Emphasis added.)

The quoted section above shows distinct advantages of having a plurality of detachable wheeled carriages when trying to move the parlor through a barn, milk house, or other unevenly surfaced area. The plurality of wheeled carriages allows one or two individuals moving the parlor to go over obstacles by raising and lowering individual wheels, without physically lifting the parlor. The mobile milking house of Ferris teaches that the trailer containing the enclosed, self-contained milking equipment, is supported by wheels 17, illustrated in FIGS. 1, 2, and 4 as a single, wheeled axle for the trailer.

The Examiner admits that “Ferris does not teach the wheels being adjustably mounted so as to raise and lower with respect to the carriage body.” (Final Office Action, page 4.) Instead, the Examiner unsuccessfully relies on Smith to fill this void. Smith teaches a trailer having *two wheels* that may “be raised or lowered with respect to base 14 to accomplish the objectives of the present invention.” (Col. 4, lines 63-66.) The portable corral of Smith can immovably seat firmly on the ground while the corral is deployed, or tip so that the back of the base 14 is in contact with or adjacent to the ground. (Col. 5, lines 1-22.) There simply is no teaching in Smith of wheeled carriages temporarily connected to a milking parlor frame, where each carriage is detachable from the milking parlor frame, as required by claims 11 and 12 as currently presented. Appellants submit that Smith fails to fill the teachings missing from Ferris.

In summary, Ferris and Smith fail to provide any suggestion or teaching of “a plurality of wheeled *carriages temporarily connected* to the milking parlor frame, each *carriage being detachable from the milking parlor frame*.” Accordingly, the combination of Ferris and Smith fail to teach or suggest each and every limitation of claims 11 and 12. Appellants respectfully request that the Board reverse the rejection of Claims 11-15 and 17 based upon Ferris in view of Smith, and direct that a notice of allowability be issued.

2. The Examiner's rejection of Claims 11-15 and 17 under 35 U.S.C. § 103(a) over Ferris in view of Smith should be reversed because to modify Ferris and Smith as suggested by the Examiner, would render the Ferris and Smith devices to be unsuitable for their intended purpose.

In addition to those reasons proffered in Appellants' prior responses, and summarized and reiterated above, Appellants also submit that to modify Ferris and Smith as suggested by the Examiner, would render the inventions of Ferris and Smith unsuitable for their intended purpose.

M.P.E.P. § 2143.01 (V) states that if "proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." (Citing In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).)

Indeed, many of the above remarks may be reiterated in this section as they directly go to Appellants' assertion that to modify the devices of Ferris and Smith as the Examiner suggests, would completely and utterly defeat the intended purposes of those prior art devices. The Examiner alleges that the axle of the trailer of Ferris is "detachable." "Detachably connected," as used in the present application, is described in the specification to be attachment of the carriage to the milking parlor accomplished via *hand turned* bolts or *clamps*. (Specification paragraph [0023].) To modify Ferris, as suggested by the Examiner, would require that the semi trailer axle of Ferris be detachably connected via hand turned bolts or clamps. Appellants do not dispute that an axle *may* be removed from a trailer (e.g., above Appellants have stated that axles are 'replaceable,' but not 'detachable' as that term is used in the present application). Appellants' position is that one of skill in the art would not consider the axle of a semi trailer to be removable as that term is used in the present application.

Appellants submit that the Examiner is drawing on presumptions that one of skill in the art would not presume. One of skill in the art would never presume that an operator of a semi truck and trailer would ever set out on a highway with a "detachable" axle connected to a semi trailer via hand turned bolts or clamps. To act as the Examiner alleges would require that a truck driver go from stop to stop, at each stop jacking up the semi trailer, removing the axle of

the semi-trailer by hand loosening the bolts or clamps, loading/unloading the cargo, reattaching the axle, and returning to the open road to travel to the next destination. This is not an assumption that the person of ordinary skill in the art, or a layperson for that matter, would ever make, nor would any truck driver ever perform.

As shown by the Appellants, when the modification suggested by the Examiner is applied to the prior art structure, the device of Ferris is grossly *incapable* of performing its intended use. The Examiner admits that “Ferris does not teach the wheels being adjustably mounted so as to raise and lower with respect to the carriage body.” (Final Office Action, page 4.) To remedy this particular failing of Ferris, the Examiner turns to Smith. Smith is directed to a portable corral, and teaches a trailer having two wheels that may “be raised or lowered with respect to base 14.” (Col. 4, lines 63-66.) But Smith, as stated above, simply fails to teach, or otherwise suggest the use of “a plurality of wheeled *carriages temporarily connected* to the milking parlor frame, each *carriage being detachable from the milking parlor frame*,” as recited in Claims 11 and 12.

To modify the invention of Smith, as suggested by the Examiner, to have carriages temporarily connected and detachable would render Smith unsuitable for its intended use as well. As stated in Smith, “it can be seen that the various components of the present invention combine to provide a portable corral structure particularly suited for *ease of transporting* and employment...” (col. 7, lines 59-62.) If Smith were required to detach the wheels, instead of raising or lowering the wheels, not only is the use of movable wheels defeated, but the whole purpose of having a portable corral that is easily used to transport the corral from place to place would be defeated. It is a situation reminiscent of that in Ferris, detachable wheels that are temporarily connected is inapposite to the teachings of the references. To put detachable wheeled carriages on Smith, would require that one of skill in the art would require that the operator of the Smith corral to tow the portable corral to a deployment site, jack up the corral trailer on one side, remove the wheel and axle, lower the corral to the ground, jack up the other side of the corral trailer, remove the other wheel and axle, use the corral, jack up the corral on one side, reattach the wheel and axle, jack up the other side, reattach the other wheel and axle,

tow the corral to the next site and repeat. The is not a process that is going to exhibit “*ease of transporting and employment*,” as stated in Smith. (Col. 7, lines 59-62.)

The Examiner has reiterated that “[i]f the prior art structure is capable of performing the intended use, then it meets the claim,” as stated in paragraph 2 of the Final Office Action, and again in the Advisory Action. Appellants further submit that Ferris, even as modified by Smith, is incapable of performing the intended purpose of the Appellants’ claimed invention. Appellants have shown above that one of the uses, is movement of the milking parlor easily through the parlor building. Because Ferris and Smith fail to teach detachable carriages with wheels that can be moved up and down, the such an intended use is unattainable.

Another intended use of the milking parlor of the Appellants’ claimed invention is that once positioned in the installation site in the parlor building:

A layer of concrete may now be poured over the frame base 12 to entirely cover the longitudinal and lateral structural members 30, 31 and 32 of the frame base. The surface of the concrete layer is smoothed and treated as appropriate to provide a smooth, sanitary surface to support the cows during milking in the modular parlor. The layer of concrete, illustrated by the dashed lines 80 in Fig. 2, further serves to anchor the modular parlor 10 firmly in place in the milking parlor. Although the modular parlor at this point is essentially permanently installed, if, at a later time, it is desired to remove the parlor, removal can be accomplished easily by breaking up the concrete layer 80 that covers the frame base 12.

(Specification, paragraph [0026].) *If* one were to modify Ferris, as suggested by the Examiner, and remove the axle, and sit the semi trailer down inside a parlor building, there would be no place to cement the trailer in place that would result in removal that may easily be accomplished. Therefore, the device of Ferris is grossly *incapable* of performing at least this intended use of the Appellants’ claimed invention, and therefore, not only can it not meet the claim, but indeed there can be “no suggestion or motivation to make the proposed modification.”

For at least the reason that to modify Ferris and/or Smith, as suggested by the Examiner, would render the prior art invention being modified unsatisfactory for its intended

purpose, Appellants respectfully request that the Board reverse the rejection of Claims 11-15 and 17 based upon Ferris in view of Smith, and direct that a notice of allowability be issued.

3. The Examiner's rejection of Claims 11-15 and 17 under 35 U.S.C. § 103(a) over Ferris in view of Smith should be reversed because Ferris and Smith are directed to a non-analogous art.

Appellants also submit that Ferris and Smith are art that is non-analogous to the Appellants' claimed invention. The present claims are not directed to a trailer, contrary to the Examiner's allegations of analogous art. In the Final Office Action, the Examiner alleges that Smith tries to fill the obvious void of Ferris relating to the "carriage body and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body," by stating that Smith is "within the analogous art of animal related *trailers*," and teaches means for adjustably mounting the wheels." (Final Office Action, page 4.) Thus, the Examiner has stated that the relevant category of art is animal related trailers.

Appellants respectfully submit that Appellants' claimed invention is capable of being transported *on a trailer*, but it is not directed to an animal related trailer, or even a 'trailer,' which is exactly what Ferris and Smith are concerned with. As the term 'trailer' is defined in the American Heritage Collage Dictionary, Third Edition, a trailer is "a large transport vehicle designed to be hauled by a truck or tractor." Appellants' modular parlor is transportable on wheels by being "pushed or pulled, as supported by the wheeled carriages, from the factory floor to the loading dock and preferably directly onto the bed of a flatbed truck that is at the same level as the loading dock...The modular parlor is secured to the bed of the truck and transported to the dairy where it is to be installed." (Specification, paragraph [0025].) Hence, the parlor *is not a trailer*; it may be transported *on a trailer* or flatbed truck, but it is not a trailer.

The trailer of Ferris is exactly what is embodied by the term 'trailer' as conventionally defined, and in fact, in Ferris, a truck (reference numeral 18) is even shown in FIG. 1. Ferris describes that the "*invention is to provide a mobile milking unit in the form of a milking room and milk house combination which is adapted to operate between farms in a local area consisting of an enclosed platform carrying stalls for cows and which may travel on a highway...whereby the entire milking operation may be performed by the mobile unit.*" (Col. 1,

lines 57-62, emphasis added.) The trailer of Ferris is meant to go from farm to farm, milking cows, and collecting the milk. The destinations of the Ferris trailer are the first farm, where the cows are milked, the second farm, where the cows are milked, and on and on, all to “handle the milking more quickly and efficiently.” (Col. 1, line 18.) All of these descriptions in Ferris directly support the Appellants’ contention that Ferris is a semi-trailer that does not anticipate, nor obviate, the portable milking parlor of the Appellants’ claimed invention with detachable carriages temporarily connected to the parlor frame.

Just like Ferris, Smith too is concerned with animal related trailers, and specifically deals with the transport of a portable corral. Just like Ferris, Smith also embodies the conventional definition of a trailer, unlike the presently claimed invention.

For at least the reason that Ferris and/or Smith, are directed to animal related trailers which is not an analogous art of the presently claimed invention, Appellants respectfully request that the Board reverse the rejection of Claims 11-15, and 17 based upon Ferris in view of Smith, and direct that a notice of allowability be issued.

C. Rejection of Claims 16 and 18 Under 35 U.S.C. § 103(A) Based on Ferris in View of van der Lely.

In the Final Office Action dated May 3, 2006, Claims 16 and 18 were rejected under 35 U.S.C. § 103(a) over Ferris in view of van der Lely. The Examiner maintained this rejection in the Advisory Action mailed June 26, 2006. Appellants respectfully request the Board reverse the rejection maintained by the Examiner for at least the reasons that are described below.

1. The Examiner’s rejection of Claims 16 and 18 under 35 U.S.C. § 103(a) over Ferris in view of van der Lely should be reversed because at least one limitation of each of these claims is not taught or suggested by the combination of Ferris and van der Lely.

Appellants have shown above that Ferris fails to teach or suggest each and every element of Claim 12, from which Claims 16 and 18 depend, and Appellants respectfully submit that van der Lely fails to provide the missing teachings. Appellants have further included Claims

16 and 18 in this Appeal to further dispel any question as to if van der Lely contributes any of the missing elements of Ferris.

In the Final Office Action, the Examiner states that “Ferris as modified does not disclose the milking station containing an automatic teat cup cluster detacher including a support arm for supporting a teat cup cluster.” (Page 6.) To remedy this failing the Examiner relies upon van der Lely, however van der Lely fails to fill the other voids in Ferris, with regard to independent Claim 12, as discussed at length above. van der Lely is directed to an apparatus for automatically milking animals. (Col. 1, line 6.) van der Lely teaches that a “rapid and effective emplacement of teat cups on the teats of an animal to be milked, such as a cow, is achieved by disposing the teat cups so that...they are moved from an inclined position to one which is more upright.” (Col. 1, lines 14-18.)

The disclosure of van der Lely further discusses robotic arms (col. 3, line 54 – col. 4, line 17), housings (col. 4, lines 34-48), and collecting members (col. 4, lines 49-53). There is no suggestion of wheeled carriages, axles, detachable carriages, or other subject matter of Claim 12, in van der Lely. Therefore, van der Lely alone or in combination with Ferris cannot be found to obviate Claim 12, from which Claims 16 and 18 depend.

For at least the foregoing reasons, Appellants respectfully submit that the combination of Ferris and van der Lely fails to teach:

a plurality of wheeled carriages temporarily connected to the milking parlor frame, each carriage being detachable from the milking parlor frame,

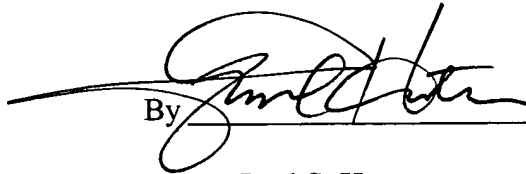
as required by Claim 12, from which Claims 16 and 18 depend. Accordingly, Appellants respectfully request reversal of the Examiner’s rejection of Claims 16 and 18.

VIII. CONCLUSION

In view of the foregoing, Appellants respectfully submit that Claims 11-18 are not properly rejected under 35 U.S.C. § 103(a) over Ferris, Smith, and van der Lely, and are therefore patentable. Accordingly, the Appellants respectfully request that the Board reverse all claim rejections and indicate that a notice of allowance respecting all pending claims should be issued.

Respectfully submitted,

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CLAIMS APPENDIX

1. (Withdrawn) A method of transporting and installing a modular milking parlor comprising:

(a) providing a modular milking parlor having a rigid milking parlor frame including a rectangular frame base including lateral and longitudinal members joined together to define a front side and a back side of the milking parlor, and a plurality of milking stations mounted in a row to the milking parlor frame above the frame base;

(b) attaching wheeled carriages to the frame of the modular milking parlor, each wheeled carriage having a carriage body and a caster wheel that can be raised or lowered with respect to the carriage body, the carriages being attached to the modular milking parlor with the frame base resting on the ground;

(c) raising the modular milking parlor off of the ground by advancing the wheels of each carriage away from the carriage body to lift the carriage body and the frame of the milking parlor attached thereto;

(d) rolling the modular milking parlor as supported by the wheels of the carriages over at least part of the transport of the modular milking parlor to a site where the modular milking parlor is to be installed; and

(e) at the site at which the modular milking parlor is to be installed, withdrawing the wheels of the carriages to drop the modular milking parlor down until the frame base rests on the surface of the site and then removing the carriages from the frame of the modular milking parlor.

2. (Withdrawn) The method of Claim 1 including the further step of depositing a layer of concrete over and covering the frame base of the modular milking parlor after it is positioned at the installation site.

3. (Withdrawn) The method of Claim 1 wherein the modular milking parlor supported by the wheels of the carriage is rolled from a point of assembly of the modular milking parlor to a flatbed truck, including the steps of loading the modular milking parlor with the carriages attached thereto onto the truck, transporting the modular milking parlor on the truck to

a position near the site at which the modular milking parlor is to be installed, unloading the modular milking parlor from the truck and rolling the modular milking parlor supported by the wheels of the carriages to the site at which the modular milking parlor is to be installed.

4. (Withdrawn) The method of Claim 3 further including adjusting the height of the wheels of the carriages as the modular milking parlor is rolled from the truck to the point of installation to accommodate changes in the height of the terrain over which the modular milking parlor is being rolled.

5. (Withdrawn) A method of installing a modular milking parlor comprising:

(a) providing a modular milking parlor having a rigid milking parlor frame including a rectangular frame base and a plurality of milking stations mounted in a row to the milking parlor frame above the frame base;

(b) positioning the modular milking parlor at the site at which it is to be installed with the frame base resting on a surface at the position at which the modular milking parlor is to be installed; and

(c) depositing a layer of concrete over the frame base to cover and enclose the frame base.

6. (Withdrawn) A wheeled carriage suited for transporting a modular milking parlor, comprising:

(a) a carriage body;

(b) a plurality of caster wheels;

(c) means for adjustably mounting the wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body; and

(d) means for releasably connecting the carriage body to a structural member.

7. (Withdrawn) The wheeled carriage of Claim 6 wherein the means for adjustably mounting the wheels to the carriage body includes a hand operated jack connected to each wheel.

8. (Withdrawn) The wheeled carriage of Claim 6 wherein the means for releasably connecting the carriage body to a structural member includes a downwardly extending section of the carriage body with a slot therein formed to fit over an upright web of a structural member, and a bolt threaded through openings in walls of the downwardly extending section at the slot in the section such that the bolt can be passed through an opening in an upright web of a structural member.

9. (Withdrawn) The wheeled carriage of Claim 6 wherein the means for adjustably mounting the wheels to the carriage body includes an air pressure operated piston-cylinder connected to each wheel.

10. (Withdrawn) The wheeled carriage of Claim 9 further including a valve connected to each piston-cylinder and operable to supply air under pressure in one valve position and to release air in the piston-cylinder in another position.

11. (Previously Presented) A modular milking parlor comprising:

(a) a rigid milking parlor frame comprising:

(1) a rectangular frame base including lateral and longitudinal members joined together to define a front side and back side of the modular parlor,

(2) a plurality of upright members attached to and extending upwardly from the frame base,

(3) at least one longitudinal support member attached to upright support members and extending along the front side of the modular parlor above the frame base, and at least one lateral support member extending from an upright member positioned at the back side of the modular parlor and connected to the longitudinal support member to brace the longitudinal support member;

(b) a plurality of milking stations mounted in a row to the milking parlor frame between the frame base and the longitudinal support member at the front side of the modular parlor, further including a plurality of wheeled carriages temporarily connected to the milking parlor frame, each carriage being detachable from the milking parlor frame upon arrival of the frame at a destination and having a carriage body and means for adjustably mounting

wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.

12. (Previously Presented) A mobile modular milking parlor comprising:

- (a) a rigid milking parlor frame including a rectangular frame base including lateral and longitudinal members joined together to define a front side and back side of the modular parlor;
- (b) a plurality of milking stations mounted in a row to the milking parlor frame above the frame base at the front side of the modular parlor; and
- (c) a plurality of wheeled carriages temporarily connected to the milking parlor frame, each carriage being detachable from the milking parlor frame upon arrival of the frame at a destination and having a carriage body and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body.

13. (Previously Presented) The mobile modular milking parlor of Claim 12 wherein at least some of the lateral and longitudinal members of the frame base are formed of structural steel beams having a center web extending upwardly.

14. (Previously Presented) The mobile modular milking parlor of Claim 13 including one or more holes in the upright webs of the beams of the frame base by which the frame may be connected to the wheeled carriages and supported for transport of the modular parlor.

15. (Previously Presented) The mobile modular milking parlor of Claim 12 wherein the frame base includes a front longitudinal member and a back longitudinal member that are parallel to each other, and wherein a plurality of lateral members extend between and are attached to the front and back longitudinal members.

16. (Previously Presented) The modular milking parlor of Claim 12 wherein each milking station contains an automatic teat cup cluster detacher.

17. (Previously Presented) The modular milking parlor of Claim 12 including groups of milk hoses, vacuum lines, and control lines extending from each of the milking stations together to a longitudinal end of the modular milking parlor.

18. (Previously Presented) The modular milking parlor of Claim 16, wherein the automatic teat cup cluster detacher includes a support arm for supporting a teat cup cluster that has been removed from a cow.

19. (Canceled).

EVIDENCE APPENDIX

No evidence entered with this Brief.

RELATED PROCEEDINGS APPENDIX

There are no related appeals and interferences.



APPEAL BRIEF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Rolf W. Reisgies
Title: MODULAR MILKING PARLOR AND TRANSPORT SYSTEM
Appl. No.: 10/643,521
Filing Date: 8/19/2003
Docket No.: 034664-0141

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

"Express Mail" Mailing Label No.: EV 246427008 US
Date of Deposit: October 5, 2006

I hereby certify that these attached documents:

- *Appeal Brief
- *Credit Card Payment Form; \$500.00
- *Express Mail Postcard

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Enclosed for filing please find the above-referenced documents. Please indicate receipt of these documents by returning the attached postcard with the official Patent and Trademark Office receipt stamped thereon.

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